

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RANDALL GORDON STUKKIE,

Defendant-Appellee.

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UNPUBLISHED

April 19, 2005

No. 253823

Ottawa Circuit Court

LC No. 03-027183-AR

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted from the circuit court's order affirming the district court's suppression of breath alcohol test results. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested for operating a vehicle under the influence of intoxicating liquor/unlawful blood alcohol level, MCL 257.625, and agreed to take a breath alcohol test. The first test, administered at 2:33 a.m. after a fifteen-minute observation period, returned an "invalid sample" reading. The second and third tests, administered at 2:37 a.m. and 2:39 a.m., resulted in breath alcohol analyses of .25% and .28%, respectively.

The district court granted defendant's motion to suppress the test results, finding that while a fifteen-minute period was not required between the invalid test and the second test and the second and third tests, the four-minute and two-minute periods observed by the officer precluded a finding that the test results were reliable. The circuit court affirmed.

We review a lower court's findings of fact on a motion to suppress for clear error and its ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

Breath alcohol test results must be both relevant and reliable to be admissible. Suppression of test results is required only when a deviation from administrative rules calls into question the accuracy of the test results. *People v Fosnaugh*, 248 Mich App 444, 450; 639 NW2d 587 (2001).

The lower courts agreed with defendant that, because the presence of mouth alcohol resulted in an "invalid sample" message when the first test was administered, longer waiting periods than were observed between the first and second tests and the second and third tests were

required to ensure that mouth alcohol was no longer present.<sup>1</sup> However, defendant's assertion that mouth alcohol was likely present when the second and third tests were administered was unsubstantiated, and he offered no explanation as to why, if mouth alcohol was still present, the second and third tests produced valid results. *Id.* at 452. No evidence supported the lower courts' findings that the abbreviated waiting periods observed between the first and second tests and the second and third tests undermined the reliability of the test results. The test results were not shown to be inaccurate. Suppression of the test results was not warranted under the circumstances. *Id.* at 450. We reverse the circuit court's order affirming the district court's decision, and remand this matter to the district court for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly  
/s/ David H. Sawyer  
/s/ Kurtis T. Wilder

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<sup>1</sup> The *Fosnaugh* Court observed that neither Rule 325.2655(1) nor the operator's manual requires that a fifteen-minute waiting period be observed between breath alcohol tests. *Id.* at 456 n 7.